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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 EDWARD LOPEZ, JR.,  
15 Defendant.

Case No.: 90cr1089-CAB-1; 17cv878-  
CAB

**ORDER DISMISSING MOTION TO  
VACATE, SET ASIDE, OR  
CORRECT SENTENCE [Doc. No.  
220] FOR LACK OF JURISDICTION**

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18 On April 27, 2017, Petitioner Edward Lopez filed a motion under 28 U.S.C. § 2255  
19 to vacate, set aside, or correct a sentence. [Doc. No. 220.] On June 2, 2017, Respondent  
20 filed a motion to dismiss the petition for lack of jurisdiction. [Doc. No. 222.] On June  
21 28, 2017, Petitioner filed a Traverse/Reply to Government's motion to dismiss. [Doc.  
22 No. 223.] For the reasons set forth above, Petitioner's motion to vacate, set aside, or  
23 correct his sentence under 28 U.S.C. §2255 is HEREBY DISMISSED for lack of  
24 jurisdiction.

25 **FACTUAL AND PROCEDURAL BACKGROUND**

26 On November 7, 1990, Petitioner was charged with unlawful possession of  
27 ammunition by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). [Doc. No. 1];  
28 *United States v. Lopez*, 8 F.3d 32 (9th Cir. 1993) (unpublished) ("Lopez I"). Petitioner

1 was subsequently convicted and sentenced to 180 months' custody. *United States v.*  
2 *Lopez*, 108 F.3d 339 (9th Cir. 1997) (unpublished) ("Lopez II"). After several appeals  
3 and remands, Petitioner's conviction and sentence were affirmed on February 13, 1997.  
4 *Id.* Petitioner's conviction and sentence thereafter became final when the United States  
5 Supreme Court denied certiorari on February 23, 1998. *Lopez v. United States*, 118 S. Ct.  
6 1098 (1998).

7 On February 17, 1999, Petitioner filed a Motion to Vacate, Set Aside, or Correct  
8 Sentence pursuant to 28 U.S.C. § 2255. [Doc. No. 128.] This Court denied that motion on  
9 July 20, 1999. [Doc. No. 136.] The Ninth Circuit subsequently denied a Certificate of  
10 Appealability on March 22, 2001. [Doc. No. 139.] On April 27, 2017, Lopez filed a  
11 second Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255.  
12 [Doc. No. 220.] There is no indication that Petitioner has sought leave from the Ninth  
13 Circuit to file a second motion challenging his sentence in this matter.

#### 14 DISCUSSION

15 The Antiterrorism and Effective Death Penalty Act ("AEDPA") "imposes  
16 significant limitations on the power of federal courts to award relief to prisoners who file  
17 'second or successive' habeas petitions." *United States v. Lopez*, 577 F.3d 1053, 1059 (9th  
18 Cir. 2009). "A petitioner is generally limited to one motion under § 2255, and may not  
19 bring a 'second or successive motion' unless it meets the exacting standards of 28 U.S.C.  
20 § 2255(h)." *United States v. Washington*, 653 F.3d 1057, 1059 (9th Cir. 2011).

21 Section 2255(h) provides that "[a] second or successive motion must be certified as  
22 provided in section 2244 by a panel of the appropriate court of appeals." Section  
23 2244(b)(3)(A), in turn, provides that "[b]efore a second or successive application  
24 permitted by this section is filed in the district court, the applicant shall move in the  
25 appropriate court of appeals for an order authorizing the district court to consider the  
26 application."

27 The requirements of section 2255(h) "create[ ] a jurisdictional bar to the  
28 petitioner's claims: 'If the petitioner does not first obtain [the Ninth Circuit's]

1 authorization, the district court lacks jurisdiction to consider the second or successive  
2 application.” *Ezell v. United States*, 778 F.3d 762, 765 (9th Cir. 2015) (quoting *Lopez*,  
3 577 F.3d at 1061). Thus, “[a] second or successive § 2255 petition may not be considered  
4 by the district court unless petitioner obtains a certificate authorizing the district court to  
5 do so.” *Alaimalo v. United States*, 645 F.3d 1042, 1054 (9th Cir. 2011) (citing 28 U.S.C.  
6 § 2255(h)).

7 As discussed above, petitioner filed § 2255 petition in 1999, and has now filed  
8 another § 2255 petition. There is no indication that petitioner has sought or obtained the  
9 requisite certificate from the Ninth Circuit authorizing him to file this § 2255 motion. In  
10 his traverse, Petitioner makes arguments as to why he should be allowed to file a  
11 successive petition, but he does not address the requirement that such a motion must be  
12 filed with the “appropriate court of appeals.” 28 U.S.C. § 2255(h).

13 Because Petitioner has failed to obtain authorization from the Ninth Circuit as  
14 required by § 2255(h), this court lacks jurisdiction to consider his § 2255 motion and  
15 must therefore dismiss it. *See Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam)  
16 (directing the district court to dismiss an unauthorized habeas petition for lack of  
17 jurisdiction); *Washington*, 653 F.3d at 1065 (holding that the district court lacked  
18 jurisdiction to entertain the petitioner's successive § 2255 motion because the Ninth  
19 Circuit had not issued a certificate authorizing such a motion); *United States v. Allen*, 157  
20 F.3d 661, 664 (9th Cir. 1998) (holding that the district court lacked jurisdiction to  
21 consider the merits of a successive § 2255 claim where the petitioner did not request the  
22 requisite certification from the Ninth Circuit). *See also Williams v. United States*, 2016  
23 WL 2745814 (D. Hawaii, May 11, 2016), \*3-5 (finding that second §2255 motion based  
24 on *Johnson v. U.S.*, 135 S.Ct. 2551(2015), required Ninth Circuit certification).

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1 CONCLUSION

2 For the reasons set forth above, Petitioner's motion to vacate, set aside, or correct  
3 his sentence under 28 U.S.C. §2255 [Doc. No. 220] is **HEREBY DISMISSED** for lack  
4 of jurisdiction.

5 **IT IS SO ORDERED.**

6 Dated: July 7, 2017



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8 Hon. Cathy Ann Bencivengo  
9 United States District Judge  
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